

REMARKS

By this amendment, claims 2-10, and 12-17 are pending, in which claims 1 and 11 are canceled without prejudice or disclaimer and claims 2-9 are currently amended. Because the merely rewrites claim 4 into independent form and places the remaining claims in condition for immediate allowance, entry of this amendment is appropriate after final rejection.

The final Office Action mailed April 22, 2005 allowed claims 15-17, objected to claims 2-3, 5, and 10-11 as allowable by dependent on a rejected base claim, and rejected claims 1, 4, 6-9, and 12-13 under 35 U.S.C. § 102 as anticipated by *Kell* (US 5,927,057).

The allowability of claims 2-3, 5, 10-11, and 15-17 is noted with appreciation, and claims 2-3 and 5 have accordingly been rewritten into independent form. Moreover, the allowable subject matter of claim 11 has been incorporated into claim 9, and claims 6-8 are made dependent on allowable claim 5. Accordingly, claims 2-3, 5-10, and 12-17 are in condition for immediate allowance.

The rejection of claim 4, on the other hand, is respectfully traversed because *Kell* fails to disclose the features of the claims. For example, claims 4 recite: “determining whether the vehicle has been driven for a predetermined period of time” and further specifies that “determining whether the vehicle has been driven” includes:

monitoring one of more of the following conditions: gear shift position, parking brake position, seat belt buckling state, use of turn signals, use of headlights, whether an alternating current generator is operating in a high mode or a low mode, and tachometer input; and

determining whether the vehicle has been driven based on the one or more of the monitored conditions.

This feature is not shown in *Kell*, which, in fact, is directed to a type of odometer fraud that occurs when the vehicle is not even moving. More specifically, *Kell* discloses a method of preventing odometer fraud by periodically storing the odometer value in a number of dispersed

non-volatile memory locations (Abstract). According to *Kell*, every ten seconds or so, a “cluster control module **24** reads the stored odometer mileage variable in each of the plurality of non-volatile memory locations **26, 32, 36**” and “causes each non-volatile memory location **26, 32, 36** to store the highest odometer mileage variable stored in any of the non-volatile memory locations” (col. 3:15-21). This approach forces a would-be tamperer to modify all the odometer readings disposed in multiple locations of the vehicle before the next read-and-update step by the cluster module **24**, a procedure that is disclosed to be more difficult if the period of time is only ten seconds (see col. 3:22-29).

Kell fails to disclose, however, any feature of “determining whether the vehicle has been driven for a predetermined period of time” as recited in claim 4, much less whether this determination is performed based on “monitoring one of more of the following conditions: gear shift position, parking brake position, seat belt buckling state, use of turn signals, use of headlights, whether an alternating current generator is operating in a high mode or a low mode, and tachometer input.” In fact, “determining whether the vehicle has been driven for a predetermined period of time” is irrelevant to the operation of *Kell*’s system. For example, it is probably far too dangerous for a would-be tamperer to access the various non-volatile memory locations on a moving vehicle, so, to be effective, *Kell* would still have to work when the vehicle is not moving at all (e.g., on a lift in a garage). *Kell*’s alternative embodiment of performing the read-and-update step “as the ignition key is turned on” also forecloses the relevance of “determining whether the vehicle has been driven for a predetermined period of time” in its system.

In response to the arguments made regarding now cancelled claim 1, the final Office Action contended that “*Kell* talks about updating the mileage recorded of the car every 10 seconds, essentially ‘determining whether the vehicle had been driving for a predetermined

period of time.” Nevertheless for claim 4, the determining is recited to be based on one or more monitored conditions that include: “gear shift position, parking brake position, seat belt buckling state, use of turn signals, use of headlights, whether an alternating current generator is operating in a high mode or a low mode, and tachometer input.” Thus, even if updating the mileage every ten seconds is arguably or essentially the determining, *Kell* does not disclose any other conditions based upon which the mileage is updated, much less the conditions specifically recited in claim 4.

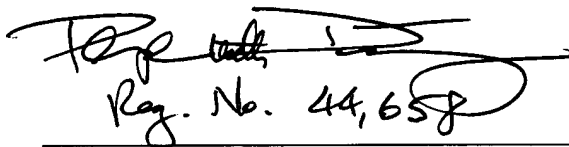
The passages cited in the final Office Action for this feature do not support the rejection. For example, the Office Action in the rejection of claim 4 states that “Kell discloses a gear shift position (Col. 2, Lines 30-42).” This appears to be a reference to Kell’s sentence stating: “A typical multiplex ring would also comprise a speed control module, a radio control module, etc.” A “gear shift position” is not explicitly disclosed, but more seriously, even if it is thought to be part of the “speed control module” or the “etc.,” there is no disclosure in *Kell* that gear shift position has anything to do with its method of preventing odometer fraud.

As another example, col. 3:5-8 merely states: “These communication standards allow electrical communication between control modules, which enables the odometer mileage variable to be stored in a plurality of discrete non-volatile memory locations within the vehicle.” No disclosure of “determining whether the vehicle has been driven for a predetermined period of time” as recited in claim 4 is found here.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at 703-425-8516 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

DITTHAVONG & CARLSON, P.C.



Reg. No. 44,658

Stephen C. Carlson
Attorney/Agent for Applicant(s)
Reg. No. 39929

6/22/05
Date

10507 Braddock Rd
Suite A
Fairfax, VA 22032
Tel. 703-425-8516
Fax. 703-425-8518